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Letter dated 17 June 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 21 April 2003 (S/2003/440).

The Counter-Terrorism Committee has received the attached third report from Germany submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 13 June 2003 from the Permanent Representative of Germany to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Pursuant to your predecessor's letter dated 4 April 2003, I have the honour to transmit herewith the second supplementary report of the Government of the Federal Republic of Germany to the Counter-Terrorism Committee, prepared in compliance with paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

Germany stands ready to provide the Committee with further information, as required.

Enclosure

Second supplementary report to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On 27 December 2001 Germany submitted a report to the Counter-Terrorism Committee (CTC) prepared in compliance with paragraph 6 of Security Council Resolution 1373 (2001). On 22 October 2002 Germany submitted a supplementary report to the CTC responding to a number of preliminary comments/questions contained in a letter from the CTC dated 15 July 2002. In a letter dated 4 April 2003 the CTC put forward a number of further questions and comments regarding implementation of the Resolution for the consideration of the German Government. This second supplementary report provides answers to those questions and comments.

1. *The CTC notes from the supplementary report that all banks in Germany have to be licensed and supervised by the Federal Financial Supervisory Authority. Does Germany have any provision for regulating alternative money remittance agencies? Please outline such provisions.*

Under the Banking Act (Kreditwesengesetz, KWG) not only banks but also all providers of money transfer services in Germany are supervised by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin). No. 6 of the second sentence of Section 1 (1a) of the Act defines the execution of payment orders as a financial service for which pursuant to Section 32 (1) a written licence from the Authority is required. It is a criminal offence to provide such services without the required licence (Section 54 (1)2). If financial services are provided without the required licence, the Authority may take administrative action under Section 37 to prevent the continuation of the business.

2. *The CTC would appreciate receiving:*

   - *a report on the progress made with the drafting and enactment of the proposed amendments of the Prevention of Terrorism Act that are intended to implement sub-paragraphs 2 (f) and (g) of the Resolution; and*
   - *a detailed outline of the relevant provisions once they are available for public disclosure.*

Immediately following terrorist attacks in the United States on 11 September 2001, the Federal Government enacted a number of operational emergency measures allowing it to react flexibly to the changed security situation.

The first anti-terror package of legislation was aimed at extending its powers to ban extremist religious organizations and ideological associations under the Act Governing Private Associations — discontinuing what is known as the religious privilege in that Act (effective as of 8 December 2001). According to the new law, religious or ideological associations may be banned if their aims or activities are directed at violating the law, or when they are directed against the order enshrined in the constitution or against the ideal of international understanding. Discontinuing the religious privilege in no way implies an anti-religious or anti-Islamic stance. Religious or ideological organizations that practise their beliefs in conformity with the German legal order are not subject to a ban. In addition, the new Ordinance on the Reliability of Staff Employed at Airports contains regulations on an obligatory procedure for carrying out background security checks, particularly on personnel who work in restricted areas of airports. The Ordinance makes annual security checks obligatory for airport and airline employees, in particular those whose jobs require them to have access to security-relevant airport areas. The Ordinance requires, among other things, the extensive participation of security authorities and regular queries to the Federal Central Criminal Register, and defines the criteria for background security checks.

A further step in this direction was taken on 1 January 2002 when the Counter-Terrorism Act came into effect. This Act expands the powers of the security authorities, among other things by giving the Federal Criminal Police

Office the power to initiate investigations in serious cases of data sabotage. The Federal Office for the Protection of the Constitution was granted powers to gather information from credit and financial institutions in order to investigate capital flows and to gather information from aviation, postal services, and telecommunications companies. The power to gather banking and telecommunications information was also given to the Federal Intelligence Service.

In addition, the Counter-Terrorism Act also contains stricter measures with regard to legislation on foreigners, including, among other things, the denial of visas or residence permits in case of a threat to security or to the liberal and democratic order, as well as the regular expulsion of foreigners involved in terrorist networks.

Significant changes to the law on the Central Aliens Register have resulted in improved access to information in that register. The visa database, which in principle currently contains only information regarding visa applications, will be expanded to contain records on visa decisions in order to improve checks of entry traffic. Police authorities will have improved access in case of non-specific threats, such as in the context of routine identity checks, so that they can immediately determine whether a foreigner is living in Germany legally. The possibility of accessing information on groups will be extended to persons with a consolidated residence status and will be permitted also in cases of non-specific threats. In order to increase the effectiveness of their efforts, the security services will be able to call up the entire database automatically. These changes to the Central Aliens Register come into effect on 1 July 2003.

Furthermore, the Counter-Terrorism Act extends the grounds for banning associations under the Act Governing Private Associations, making it possible to take action against foreigners' associations that support violent or terrorist organisations abroad, contribute to the creation of parallel societies or hinder peaceful coexistence in Germany. The legislation governing passports and identity cards has been amended to improve the computer-aided identification of individuals based on identity papers and to prevent persons from using the identity papers of someone of a similar appearance. In addition to a photograph and signature, another biometric feature may be incorporated into passports and identity cards — also in encrypted form; details will have to be specified in a special federal law. This will make it possible to determine whether the identity of the person in question matches up with the original data stored in the document.

Section 129b of the Penal Code (StGB), effective as of 30 August 2002, extends the criminal offence of forming terrorist organizations (Section 129a StGB) to organizations based outside the country; the previous law required the existence of an independent branch organization within Germany for prosecution. Extending the criminal offence to include the founding, membership and support of a terrorist organization has created a tool geared to actual needs and to deal with the new kind of threat posed by international terrorism as demonstrated by the attacks in the US and Tunisia.

Cf. also the answer to Question 5 on legislation relating to the implementation of the eight FATF Special Recommendations on Terrorist Financing.

3. *What penalties are imposed under German law when funds or other economic resources collected for religious, cultural, or charitable purposes are diverted to purposes other than their stated purposes, in particular the financing of terrorism.*

Diverting funds to a purpose other than the purpose stated when such funds were collected may be punishable as fraud or breach of fiduciary duty under Section 263 or Section 266 of the German Penal Code.

Under Section 263 (1) of the German Penal Code, whoever through misrepresentation, distortion or concealment of facts, produces or maintains a mistaken belief causing another to suffer financial loss commits a criminal offence and shall, if he or she acted with the intent of acquiring an unlawful economic advantage for himself or herself or a third person, be punished by up to five years' imprisonment or by fine. In especially serious cases a sentence of imprisonment from six months to ten years shall be imposed (paragraph 3).

Under Section 266 (1) of the German Penal Code, whoever abuses a power accorded him or her by statute, commission of a public authority or legal transaction to dispose of another's property or to legally obligate another, or whoever violates a duty incumbent upon him or her by reason of statute, commission of a public authority, legal transaction or by a fiduciary relationship to protect another's property and thereby causes damage to the property interests he or she was legally obligated to protect, commits a criminal offence. Offenders may be sentenced to up to five years' imprisonment or fined. In especially serious cases a sentence of imprisonment from six months to ten years shall be imposed (paragraph 2 in conjunction with Section 263 (3)).

Diverting funds or economic resources may also be a criminal offence pursuant to Section 129a (3) or Section 129a (3) in conjunction with Section 129b (1) of the German Penal Code if it is done with the intention of supporting acts of terrorism. The offence is punishable by imprisonment from six months to five years. Section 129a also covers the activities of terrorists or terrorist organizations with links to German territory. Section 129b, which was enacted on 22 August 2002, stipulates that support for terrorist activities may be deemed a criminal offence even if such activities are conducted by an organization abroad. It also provides for extended forfeiture and confiscation of assets (paragraph 2).

4. *The CTC would appreciate receiving information about the application of the legislation criminalizing the financing of terrorism which resulted in the successful prosecution of the offenders.*

To date there have been no successful prosecutions relating to the financing of terrorism. Although there have been a number of investigations, they did not result in criminal proceedings.

5. *The CTC is aware that Germany may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Germany's response to these matters as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of Resolution 1373.*

In adopting the Fourth Financial Market Promotion Act (Viertes Finanzmarktförderungsgesetz), which took effect on 1 July 2002, and the Money Laundering Prevention Act (Geldwäschebekämpfungsgesetz), which took effect on 15 August 2002, Germany has fulfilled all its undertakings by June 2002 to enact in national law the 8 Special Recommendations on Terrorist Financing adopted at the FATF special meeting held in Washington in October 2001.

- Under the new Section 24c of the Banking Act (Kreditwesengesetz, KWG), a modern data retrieval system has been introduced that gives the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BAFin) electronic access to all key account data held by banks.

  Since 1 April 2003 banks have been obliged to hold these data available in a central database (containing the name and account number of the account holder as well as the names of a further person authorized to draw on the account and of an economic beneficiary other than those persons). This enables the Authority to take swift action to counter money laundering, terrorist financing, illicit underground banking and the unlicensed provision of banking and financial services.
  As well as allowing data retrieval for banking supervisory purposes, the new system introduced under Section 24c provides an effective method for immediately freezing the financial assets of specific persons and organizations listed in the annexes of UN Security Council Resolutions and EU Regulations.

- Furthermore, financial market supervisory authorities in third countries, investigating authorities in both Germany and third countries (including all Financial Intelligence Units), the courts and the Federal Ministry of Economics and Labour - the authority responsible for imposing restrictions on capital and payment

transactions under the Foreign Trade and Payments Act — are all entitled to request information on key account data.

The new Section 24c also creates the prerequisites for complying with the Convention concluded in 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union. Under this Convention, all Member States are required to take the necessary measures to provide upon the request of another Member State information on bank accounts held by a person who is the subject of criminal proceedings. To date Germany is the only country to have implemented the Convention in this effective way

The new Section 24c of the Banking Act was enacted by the Fourth Financial Market Promotion Act of 1 July 2002 and came into effect on 1 April 2003. Work is currently under way to install the computerized retrieval system. The Authority will then have access to nearly 400 million data records.

- Another of the amendments to the Banking Act introduced by the Fourth Financial Market Promotion Act o 1 July 2002 was a new Section 25a (4), which implements the core principle No. 15 of the Basel Committe "Customer due diligence for banks" of 4 October 2001 and requires institutions to deploy an internal securit system that applies to all transactions, i.e. not only those which have been identified as suspicious. Sectio 25a of the Banking Act stipulates that customers, accounts and transactions have to be monitored fo irregularities or deviations from a predefined standard pattern of behaviour. If irregularities are detected, th matter is referred to the Compliance Officer for further processing and inspection. It also requires institution to be active in conducting investigations, focusing on the categories of business relations and risk group which experience has shown to be susceptible to abuse for money laundering and financial fraud purposes. T this end they must make use of computer-aided systems which permit account profiling on the basis o parameters appropriate to the specific business structure of the institution in question. Banks must themselve decide on the basis of their own risk structure what business relationships and transactions are to be regarde as conspicuous or unusual and included in the investigation.

- The new Section 25b of the Banking Act was enacted in conjunction with the Money Laundering Preventio Act in order to give effect to FATF Special Recommendation VII and will enter into force on 1 July 2003. I lays down special organizational requirements for handling cashless payments to or from a state outside th European Union.

  Under Section 25b (1) of the Banking Act, the originating credit institution executing cashless payments t states outside the European Union may use only correct and complete data records. The credit institutio must take technical measures to enable it to identify incomplete transaction data. It is obliged pursuant to th third sentence of Section 25b (1) to complete any incomplete data records. In the case of cashless payments t a state outside the EU, intermediary credit institutions will have complied with their obligations pursuant t Section 25b (2) if they check that the mandatory particulars in any data record have been furnished an transmit the record to a further intermediary credit institution (in Germany or another EU country) or to th beneficiary's credit institution (in a third country). In accordance with sentences 2 and 3 of Section 25b (2 they are obliged, however, to take measures enabling them to identify any data records that are incomplete i respect of the required names and account number. Incomplete data records must be completed wher possible before transmission with the help of the credit institution commissioned by the customer, i.e generally by addressing an inquiry to the originating credit institution. The credit institution of th beneficiary will have complied with its obligations pursuant to Section 25b (2) if it has checked that cashles payments originating from states outside the EU contain particulars of the name of the originator and, unles the transaction is a cash remittance, the originator's account number. In accordance with sentences 2 and 3 o Section 25b (2) it is obliged, however, to take measures enabling it to identify any data records that ar incomplete in respect of the required names and account number. Incomplete data records must be complete where possible, i.e. generally by addressing an inquiry to the originating credit institution.

Section 25b (3) imposes similar obligations on financial services institutions that provide money transfer services. Prior to executing a payment order they, too, are required to record the name and address of the customer and, in accordance with the information provided by the customer, the name and the address of the beneficiary of the payment.

- As a further measure to enhance its capacity to implement financial sanctions, Germany intends to introduce other changes to the Banking Act in the planned "Second Law to amend the Customs Administration Act and Other Acts". The relevant legislative procedures have already been set in train (Cabinet decision of 1 April 2003). The new legislation is tentatively scheduled to enter into force in September 2003.

  The planned incorporation into the Banking Act of a new Section 6a is intended to provide a broad legal basis for the introduction of financial sanctions and other administrative measures in relation to banks. Where there are grounds for suspecting that deposits accepted by an institution or other assets entrusted to the institution are being used to finance a terrorist organization or that a financial transaction would, if executed, serve that purpose, the Federal Financial Supervisory Authority is to be empowered:

  1. to issue instructions to the institution's directors;
  2. to prohibit the institution from disposing of an account or deposit held at the institution;
  3. to prohibit the institution from carrying out further financial transactions.

  This is applicable especially to cases where the name of an account holder has been included in the list drawn up by the European Union for the purpose of implementing UN Security Council Resolution 1373 (2001). The proposed new Section 6a of the Banking Act will complement the European Union's competence to order the freezing of the assets of suspected terrorists residing outside the EU.

- Under the amended Money Laundering Act that took effect on 15 August 2002, the Financial Intelligence Unit (FIU) for Germany was established within the Federal Criminal Police Office (Section 5 of the Act). The new Unit's task is above all to build clearing and analysis capacities and organize data sharing with FIUs abroad. To this end banks and financial authorities are now required to submit also to the FIU all reports on suspicious transactions that might involve money laundering and the funding of terrorism. The amended Act also added new professions (in particular estate agents, attorneys, notaries, tax consultants and accountants) to the group of those required to file suspicious transaction reports.

6. *Assistance and guidance*

Germany has already furnished information to the CTC on its programmes of assistance for capacity-building as well as sample legislation and sources of advice for inclusion in the CTC's Directory of Counter-Terrorism Information and Sources of Assistance. Germany has also informed the Committee of assistance already provided for inclusion in the CTC's Matrix of Assistance Requests.